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STATE OF MARYLAND  
OPEN MEETINGS COMPLIANCE BOARD

**15 Official Opinions of the Compliance Board 107 (2021)**

**October 1, 2021**

**Baltimore Children and Youth Fund, Inc.**

The Complainant alleges that Baltimore Children and Youth Fund, Inc. (“BCYF”)<sup>1</sup> has violated the Open Meetings Act (“Act”) by failing to timely post minutes of its meetings. The Complainant further asserts that various BCYF committees have violated the Act by failing to provide adequate notice of their meetings, post agendas, or keep minutes. For the reasons that follow, we find no violation as to the timeliness of BCYF posting its minutes online but agree that several committees are subject to the Act and have likely violated its openness provisions.

**Background**

In 2016, Baltimore City voters authorized a city charter amendment that established the Baltimore City Children and Youth Fund, which provides services to the City’s youth under the administration and oversight of the Mayor and City Council. *See* Baltimore City Office of Council Services, “Bill Synopsis, Bill 20-0519,” at 2.<sup>2</sup> In 2018, the City passed an ordinance designating an interim fiscal agent for the fund and, in 2019, extended the interim agent’s term until July 1, 2020. *Id.* In May 2020, as the expiration of the interim agent’s term approached, the City enacted an ordinance designating BCYF as the permanent fiscal agent. *See* Signed Ordinance 20-0519, at 3 (codified at Baltimore City Code, Art. 5, § 9-4(a)).

Although BCYF already existed as a corporate entity,<sup>3</sup> the May 2020 ordinance provided that BCYF “shall be governed by and administered by a Board of Directors” and imposed certain requirements as to the Board’s composition. *See* Signed Ordinance 20-0519, at 5-6 (codified at Baltimore City Code, Art. 5, § 9-5(a) through (c)). The ordinance further provided that “[t]he Board must adopt bylaws for the administration of [BCYF],” “[t]he initial bylaws . . . must be

<sup>1</sup> The complaint and its supporting documents refer variously to the “Baltimore City Youth Fund” and the “Baltimore Children and Youth Fund.” We use the latter, which is the registered corporate name of the entity.

<sup>2</sup> Legislative materials related to Bill 20-0519, which was enacted as Ordinance 20-363, are available at <https://baltimore.legistar.com/Legislation.aspx> (last visited Sept. 21, 2021).

<sup>3</sup> BCYF’s Articles of Incorporation were filed August 2, 2019. *See* Md. State Dep’t of Assessments and Taxation, “Filing History, Baltimore Children and Youth Fund, Inc.,” *available at* <https://egov.maryland.gov/BusinessExpress/EntitySearch/Search> (search for “Baltimore Children and Youth Fund, Inc.”) (last visited Sept. 21, 2021).

approved by [Baltimore City’s] Board of Estimates<sup>[4]</sup> before taking effect,” and “[s]ubsequent amendments to the initial bylaws must be filed with the Board of Estimates before taking effect.” *See* Signed Ordinance 20-0519, at 6 (codified at Baltimore City Code, Art. 5, § 9-5(d)). To “ensur[e] an orderly and effective transition from the interim fiscal agent” to BCYF, the ordinance established an eight-person “Transition Board” for BCYF and assigned it numerous specific tasks, including recommending a full permanent board and drafting bylaws. *See* Signed Ordinance 20-0519, at 10-11. The Transition Board is to serve “for a period not to exceed 18 months and only until a permanent Board is approved by the Board of Estimates.” *See* Signed Ordinance 20-0519, at 11.

The ordinance designating BCYF as the fund’s permanent fiscal agent took effect on July 1, 2020. *See* Signed Ordinance 20-0519, at 12. At the time of the Complainant’s alleged violations of the Act, BCYF had been the permanent fiscal agent for about 13 months and had held eight Transition Board meetings. BCYF’s Transition Board operates under bylaws that were formally executed on April 1, 2020, before the City officially designated BCYF as the youth fund’s fiscal agent. According to BCYF, bylaws for the permanent board are “under development” and have yet to be approved by the City’s Board of Estimates.

### **Discussion**

#### *1. Whether BCYF’s Transition Board timely posted its minutes online*

The Complainant asserts that BCYF does not timely post its minutes in accordance with the Act, which provides that, generally, “as soon as practicable after a public body meets, it shall have minutes of its session prepared” § 3-306(b)(1),<sup>5</sup> and, “[t]o the extent practicable, . . . post[ed] online,” § 3-306(e)(2).<sup>6</sup> The Complainant alleges that BCYF violated the Act because, as of July 28, 2021, BCYF had not posted to its website the minutes of its May 19, 2021, or June 29, 2021, Transition Board meetings.

BCYF responds that it has timely prepared and posted minutes in accordance with the Act. BCYF’s process involves drafting minutes, having the Transition Board approve them at the next regular meeting, obtaining the Board secretary’s signature on the approved minutes, and then posting them to BCYF’s website. BCYF did not specify when exactly the May and June minutes were posted online, but both appeared on BCYF’s website by September 3, 2021.

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<sup>4</sup> The Board of Estimates is the City’s spending board and consists of the mayor, the city council president, the city solicitor, the director of public works, and the city comptroller. *See* Baltimore City Comptroller, “Board of Estimates,” <https://comptroller.baltimorecity.gov/boe> (last visited Sept. 21, 2021).

<sup>5</sup> Unless otherwise noted, statutory citations are to the General Provisions Article of the Maryland Annotated Code.

<sup>6</sup> “A public body need not prepare minutes of an open session if: (i) live and archived video or audio streaming of the open session is available; or (ii) the public body votes on legislation and the individual votes taken by each member of the public body who participates in the voting are posted promptly on the Internet.” § 3-306(b)(2).

The parties appear to conflate two separate but related issues: *preparing* minutes and *posting* them. With respect to preparing minutes, we have said that “the Act permits a public body to take a reasonable amount of time to review draft minutes for accuracy and to approve the minutes.” 2 *OMCB Opinions* 87, 88 (1999); *see also* 2 *OMCB Opinions* 11, 13 (1998) (“As a legal matter, the ‘minutes of a public body’ become such only after the public body itself has had an opportunity to review and correct the work of whoever prepared the draft minutes.” (emphasis omitted)). Thus, “[a]s a general rule, minutes should be available on a cycle that parallels a public body’s meetings, with the only lag time being that necessary for drafting and review.” 6 *OMCB Opinions* 161, 162 (2009); *see also* 8 *OMCB Opinions* 176, 177 (2013) (“Public bodies that meet monthly generally comply with [the] requirement [to prepare minutes as soon as practicable] by adopting minutes at each meeting.”). Because BCYF’s process for adopting minutes adheres to this general rule, we find no violation of the Act’s requirement to timely *prepare* minutes.<sup>7</sup>

As we read the complaint, however, the alleged violation is the failure to timely *post* the minutes. The Complainant suggests that a public body must post minutes as soon as they are approved and cites in support of this proposition a case discussing the responsibility to *prepare* minutes. In arguing against this proposition, BCYF also cites a case discussing the preparation of minutes. But the standard for *posting* minutes online (“to the extent practicable”) differs slightly from the standard for *preparing* minutes (“as soon as practicable”):

[Section] 3-306(b) [requiring a public body to prepare minutes] requires us to strike a balance between, on the one hand, the goal of promptly informing members of the public who cannot attend a meeting of the events that occurred there, and, on the other, the practical constraints faced by the public body that must prepare and adopt the minutes. For § 3-306(e) [requiring public bodies to post minutes online “[t]o the extent practicable”], the balance is different; . . . the public has access to the minutes by other methods.<sup>[8]</sup> Therefore, the balance that we strike here is between, on the one hand, the goal of providing seamless access to those members of the public who have access to the internet and, on the other, the practical constraints on the particular public body’s ability to do so.

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<sup>7</sup> This is true even though BCYF’s Transition Board occasionally meets every other month, rather than monthly. For example, the board did not meet in August 2021 and, thus, did not approve the July 21, 2021, minutes until September 15, 2021. Although we do not read the complaint to challenge this delay in *preparing* minutes as a violation of the Act, we note that we have only found delays of three months or more to violate the Act. *See, e.g.*, 8 *OMCB Opinions* 111-12 (2012) (rejecting an argument “that a delay of three months would be generally acceptable”); 7 *OMCB Opinions* 80, 81 (2011) (seven months to approve was too long).

<sup>8</sup> “[M]inutes of a public body are public records and shall be open to public inspection during ordinary business hours.” § 3-306(d). The Complainant here makes no allegation that she requested and was denied the opportunity to inspect minutes in person, only that counsel for BCYF failed to respond within a week to her email requesting that minutes be posted online.

13 *OMCB Opinions* 18, 19 (2019). “[T]he inquiry [as to whether the public body has timely posted the minutes] is fact-dependent,” *id.*, and “[w]e are seldom in a position to second-guess what was ‘practicable’ for a public body’s staff at a given point of time,” 12 *OMCB Opinions* 83, 83 (2018).

BCYF acknowledges “a minor delay of less than one month” in posting the May 2021 minutes after they were approved, a delay BCYF attributes to “operational difficulties stemming from the end of [its] first fiscal year.” Although BCYF offers no further details, we cannot say with certainty that it was practicable for BCYF to post the minutes online any sooner than it did. Nor can we say that BCYF could have posted the June 2021 minutes any earlier. We thus decline to find a violation of the Act’s requirements for posting minutes online.

*2. Whether BCYF committees are “public bodies” subject to the Act*

The Complainant also asserts that several committees of BCYF have violated the Act by failing to provide adequate notice of their meetings, post agendas, or provide minutes. “Because all the requirements of the Act are framed in terms of the meeting practices of a ‘public body,’ the initial question we must consider is whether” any of the committees “is a ‘public body’ as defined by the Act.” 7 *OMCB Opinions* 21, 24 (2010).

As relevant here, the Act defines a “public body” to include an entity that consists of at least two individuals and is created by a certain type of law or legal instrument, including a bylaw.<sup>9</sup> § 3-101(h)(1).<sup>10</sup> According to the Complainant, the committees here are public bodies because “they were expressly created in” BCYF’s bylaws.

BCYF concedes that it is a public body and that three of its committees—the Executive Committee, Audit Committee, and Equity and Inclusion Committee—were “created in” the bylaws under which BCYF’s Transition Board operates. Nonetheless, BCYF argues that, because it adopted these bylaws before the City “formally endowed [BCYF with] public authority or responsibility” (i.e., before BCYF became a public body), these bylaws are not “bylaws of a ‘public body’ within the meaning of the Maryland Code.” As such, BCYF argues, the committees do not meet the definition of “public body” under the “legal instrument” test of § 3-101(h)(1) and, thus, are not subject to the Act.

We disagree. In defining “public body” to include a multi-member entity “created by . . . bylaw,” § 3-101(h)(1)(ii)(6), the Act imposes no temporal limitation. That is, the Act does not expressly restrict the definition to an entity created by bylaws that the parent entity adopts only *after* becoming a “public body.” Nor does the Act define “bylaw.” We apply, then, the ordinary meaning of “bylaws,” *see, e.g., State v. Wilson*, 471 Md. 136, 160 (2020) (giving undefined

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<sup>9</sup>Although not expressly stated in the Act, we have said that the bylaw must be of a public body. *See* 2 *OMCB Opinions* 35, 36 (1999) (“An entity can be a ‘public body’ if it was created in the bylaws of another public body.”) (emphasis added).

<sup>10</sup> The Act also defines “public body” to include certain multimember committees appointed by the governor, the chief executive of a political subdivision, or an official subject to the policy direction of the chief executive of a political subdivision, § 3-101(h)(2), but nothing in the record suggests that any of BCYF’s committees satisfy this definition.

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statutory terms “their ordinary meaning”), namely, “rules adopted by a corporation for the governance of its internal affairs,” James J. Hanks, Jr., *Maryland Corporation Law* § 3.12 (2d ed. 2020). *Accord* Black’s Law Dictionary (11th ed. 2019) (defining “bylaw” to mean “[a] rule or administrative provision adopted by an organization for its internal governance and its external dealings”). In our view, this definition encompasses the bylaws that BCYF adopted in August 2019, particularly because BCYF admits that those are the bylaws “under which [BCYF],” now that it is a public body, “still operates.”

Our conclusion is also consistent with the Act’s legislative intent and our prior observation that “the Act should not be interpreted to allow a parent public body to sidestep” open meeting requirements based on technicalities. 9 *OMCB Opinions* 94, 97 n.2 (2013) (noting that “the Act should not be interpreted to allow a parent public body to sidestep the Act by creating committees through MOUs with private entities,” even though such memoranda are not among the legal instruments listed in § 3-101(h)(1)); *see also Andy’s Ice Cream, Inc. v. City of Salisbury*, 125 Md. App. 125, 147 (1999) (noting that a court “must not overlook the purposes of the legislation” when deciding whether a particular entity qualifies as a “public body”). The Act expressly emphasizes the importance of conducting public business “openly and publicly” and of permitting the public to observe all “the deliberations and decisions that the making of public policy involves.” § 3-102(a). Thus, if a public body like BCYF conducts public business via formally established committees, those entities are subject to the Act’s open meeting requirements, no matter when BCYF created those committees. *See, e.g., 4 OMCB Opinions* 132, 137 (2005) (“We have long distinguished between entities established by formal action of a public body versus entities established less formally . . .”). To conclude otherwise (and accept the logical conclusion of BCYF’s argument) would mean that a corporate entity established before a government bestowed the entity public status could carry out public business via “secret” committees. That would clearly frustrate the Act’s purposes.

We recognize that BCYF’s Transition Board is currently drafting new bylaws for the permanent board, and that those bylaws will not take effect until approved by the City’s Board of Estimates. But the fact remains that BCYF is a public body *now*, and its Transition Board is still operating under the bylaws that BCYF adopted in August 2019. Moreover, “a committee that did not begin its life as a public body can become one later.” 10 *OMCB Opinions* 12, 12 (2016) (involving a committee that was informally created and later became a “public body” when its parent entity adopted a resolution defining the committee’s membership and functions). Therefore, it does not matter whether BCYF was a “public body” when it adopted the August 2019 bylaws or whether the committees created in those bylaws were “public bodies” at that time. The focus of our inquiry is whether the committees *presently* satisfy the definition of “public body.”

To answer that question, we turn now to the August 2019 bylaws. *See, e.g., 7 OMCB Opinions* 105, 107 (2009) (“To apply [the legal instrument test] . . . , we simply look at whether one of the listed laws or documents created the entity in question.”). As BCYF concedes, the bylaws created the Executive Committee, Audit Committee, and Equity and Inclusion Committee. Accordingly, these committees are public bodies subject to the Act.

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The complaint references two other committees—the Community Engagement and Communications Committee, and the Hiring Committee—neither of which are mentioned in the bylaws, by name or by function. *See, e.g., 10 OMCB Opinions 67, 68 (2016)* (recognizing that “[t]he particular instrument need not create the public body by name” if it describes a multimember body and assigns it a particular function). Having no other information about the origin of these committees, we cannot conclude based on the information provided that they are public bodies.

To summarize, BCYF’s August 2019 bylaws are a qualifying legal instrument under § 3-101(h)(1). The bylaws created the Executive Committee, Audit Committee, and Equity and Inclusion Committee; thus, those entities are public bodies subject to the Act and have been since at least July 1, 2020, the effective date of the Baltimore City law designating BCYF the permanent fiscal agent of the City’s youth fund. Because BCYF has been operating under the mistaken assumption that these committees were not public bodies subject to the Act, we assume that it has also not been complying with the Act’s requirements to provide reasonable notice of these committees’ open sessions, to post agendas, and to make minutes available to the public.<sup>11</sup> *See* §§ 3-302 (providing that “a public body shall give reasonable advance notice of” an open session), 3-302.1 (providing that “a public body shall make available to the public an agenda”), 3-306 (providing that, “as soon as practicable after a public body meets, it shall have minutes of its session prepared”).

### Conclusion

We find no violations as to the timeliness of BCYF posting its minutes online. We do, however, find that BCYF’s Executive Committee, Audit Committee, and Equity and Inclusion Committee are public bodies subject to the Act and that these committees likely violated the Act’s requirements with respect to notice, agendas, and minutes. §§ 3-302, 3-302.1, 3-306. This opinion is subject to the acknowledgment requirement set forth in § 3-211.

**Open Meetings Compliance Board**

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<sup>11</sup> To be clear, the public is entitled to minutes only of those open sessions that took place after BCYF became a public body. *See 7 OMCB Opinions 64, 67 (2010)* (recognizing that “access to . . . minutes” is not “governed by the Open Meetings Act” if the entity was “not a public body at the time . . . the meetings were held.”)